***United States Court of Appeals***

***for the Second Circuit***


# AMICUS BRIEF

# 74-1730

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# United States Court of Appeals

## FOR THE SECOND CIRCUIT

**Case No. 74-1730**

CITIZENS FOR BALANCED ENVIRONMENT AND TRANSPORTATION, INC., Successor in Interest of Committee to Stop Route 7, et al.,

*Plaintiffs-Appellants,*

*—against—*

VOLPE, et al.,

*Defendants-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

## BRIEF FOR *AMICI CURIAE* NATURAL RESOURCES DEFENSE COUNCIL, INC., BERKSHIRE LITCHFIELD ENVIRONMENTAL COUNCIL, INC., THE HOUSATONIC AUDUBON SOCIETY, HOUSATONIC VALLEY ASSOCIATION, MASSACHUSETTS PUBLIC INTEREST RESEARCH GROUP, VERMONT PUBLIC INTEREST RESEARCH GROUP

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## PRELIMINARY STATEMENT

This brief is submitted on an appeal from the findings of fact, opinion and order entered on May 10, 1974 in the United States District Court for the District of Connecticut by the Honorable Jon O. Newman, United States District Judge. The findings of fact, opinion and order are reported at 6 ERC 1596 (D. Conn. 1974).

## ISSUES PRESENTED FOR REVIEW

1. Whether a highway project for which federal location approval or its equivalent has been obtained, federal monies expended and eligibility for federal funding maintained is a "federal action" for purposes of NEPA, notwithstanding last minute state election to use state money for construction.

2. Whether a project is a federal action within the meaning of NEPA regardless of whether federal funds are ultimately used on it if it is an integral part of a larger project for which federal aid has been used or is planned.

## STATEMENT OF THE CASE

Amici Curiae adopt the statement of the case set forth in the brief of Plaintiffs-Appellants.

## ARGUMENT

### POINT I

**A HIGHWAY PROJECT FOR WHICH FEDERAL LOCATION APPROVAL OR ITS EQUIVALENT HAS BEEN OBTAINED, FEDERAL MONIES EXPENDED AND ELIGIBILITY FOR FEDERAL FUNDING MAINTAINED IS A "FEDERAL ACTION" FOR PURPOSES OF NEPA, NOTWITHSTANDING LAST MINUTE STATE ELECTION TO USE STATE MONEY FOR CONSTRUCTION.**

The National Environmental Policy Act ("NEPA") applies when there is present a proposal for major federal action significantly affecting the quality of the human environment. 42 U.S.C. §4332(2)(C). Federal action is typically present when a project is wholly or partly federally funded. It is admitted that the portion of relocated Route 7 here at issue will not directly receive any federal funds for construction. This fact is not dispositive, however, of the issue of whether federal laws must be followed. Courts have recognized situations in which no federal funds have been authorized for a particular highway project, yet the highway project has taken on such a federal character that the purposes behind the National Environmental Policy Act would be defeated unless its requirements were met. It is this sort of federal involvement that is at issue in this case.

In view of the Congressional concern for the environment as reflected in the National Environmental Policy Act and the danger that the requirements of federal law established to protect environmental values will otherwise be avoided, the federal imprimatur should be found to attach to a project early in the planning process. For the same reasons, last minute waiver of federal funds for a federal project should not be allowed to alter the federal nature of the project where the purpose of such a waiver is to avoid compliance with federal statutory environmental requirements.

A. NEPA Requires That A Highway Project Become A "Federal Action" Early In The Planning Process.

NEPA is more than an environmental full-disclosure law. It is intended to effect substantive changes in federal agency decision making. In pursuit of this goal, NEPA requires that environmental review be undertaken at the earliest planning stages. Without early agency consideration of environmental factors, concern for the environmental impacts of a proposed action would come too late to be meaningfully integrated into the decision-making process. Alternative courses of action which could ameliorate environmental effects would have been foreclosed.

The language of NEPA, as well as its legislative history, makes clear that Congress intended that federal agencies engage in long-range environmental planning. Section 101(b) states that it is the responsibility of the federal government to improve and coordinate federal plans to the end that the Nation may "[f]ulfill the responsibilities of each generation as trustee of the environment for succeeding generations." 42 U.S.C. §4331(b)(1). Section 102 mandates federal agency consideration of the relationship between "local, short-term uses of man's environment, and the maintenance and enhancement of long-term productivity," and the "long-range character of environmental problems . . ." 42 U.S.C. §4332(2).

The mandate for early environmental planning was born of the fear that steps taken before NEPA review would result in commitments of money and prestige which a later NEPA review would be powerless to alter. Congress foresaw that unless there was a mandate to face environmental problems "while they are still of manageable proportions and while alternative solutions are still available," environmental decision making where "policy is established by default and inaction" and environmental decisions "continue to be made in small but steady increments" would continue. S. Rep. No. 91-296, 91st Cong., 1st Sess. 5 (1969).

Congress clearly intended that federal-aid highway projects be covered by the requirement for early environmental review since the hearings and debates over the Act make clear that such projects were considered to be among the federal actions affecting the human environment. Indeed "super-highways" were pointedly cited among the list of modern phenomena threatening the environment. See 115 Cong. Rec. 91st Cong. 1st Sess., 29068 (1970). The Department of Transportation was asked to send, and did send, a representative to testify at the Senate hearings on the Act who stated the following:

> "I think that perhaps the reason that the Department of Transportation was asked to have a representative here before your Committee was because within the purview of the Department of Transportation has lain in the past and will continue to lie in the future many of the activities that at least, are most apparent to the people of the country in the field of environmental impact.
>
> "Hearings Before the Committee on Interior and Insular Affairs, United States Senate, 91st Cong., 1st Sess., on S. 1075, S. 237. (emphasis added) at 76 (1969)."

The guidelines promulgated by the Council on Environmental Quality ("CEQ") call for early agency review: "As early as possible and in all cases prior to agency decision concerning recommendations or favorable reports on proposals for ... major federal actions ... Federal agencies will ... assess in detail

the potential environmental impact." 40 C.F.R. §1500.2(a)(1973).

In conformity with this CEQ directive, the Department of Transportation ("DOT") and the Federal Highway Administration ("FHWA") have promulgated their own detailed orders. The DOT guidelines* call for preparation of the environmental impact statement "early enough in the process so that analysis of the environmental effects and the exploration of alternatives with respect thereto are significant inputs into the decision-making process." DOT Order 5610.1A, Para. 1.8(f) To this end, the DOT Order states that NEPA's requirements shall apply to all the following: "all grants, loans, contracts, ... plans, ... formal approvals (e.g., of non-federal work plans) ..." DOT Order 5610.1A Para. 5(a) (Emphasis supplied). Moreover, the definitional guidelines that accompany DOT Order 5610.1 state that "federal actions" include "approval of State highway Programs & plans prior to grant of money." DOT Order 5610.1A, Attachment 1, "Definitional Guidelines", Para. 3(c).

The final set of guidelines promulgated pursuant to NEPA is the FHWA's Policy and Procedures Memorandum (PPM) 90-1. This directive requires that the draft environmental impact statement be prepared during the location study and that location

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* DOT 5610.1A, Procedures for Considering Environmental Impacts, 36 Fed. Reg. 23679 (1971).

approval may not be granted by FHWA until completion of the final environmental statement. PPM 90-1, Para. 6.1

Several important cases dealing with highway projects have held that prior to the commitment of any federal funds, a project becomes federal for purposes of NEPA in order to assure that there is no subversion of the requirement of consideration of environmental impacts at the earliest planning stages of federally supported projects. Indian Lookout Alliance v. Volpe, 484 F.2d 11 (8th Cir. 1973); Arlington Coalition v. Volpe, 458 F.2d 1323 (4th Cir. 1972); Lathan v. Volpe, 455 F.2d 1111 (9th Cir. 1971), modified on rehearing, 455 F.2d 1122 (9th Cir.); Daly v. Volpe, 350 F. Supp. 252 (W. D. Wash. 1972); Sierra Club v. Volpe, 351 F. Supp. 1002 (N. D. Cal. 1972); La Raza Unida v. Volpe, 337 F. Supp. 221 (N. D. Cal. 1971), aff'd, 488 F.2d 559 (9th Cir. 1973).

In Lathan v. Volpe, supra, the court stated:

> Given the purpose of NEPA to insure that actions by federal agencies be taken with due consideration of environmental effects and with a minimum of such adverse effects, it is especially important with regard to federal-aid highway projects that the §102(2)(C) statement be prepared early. If defendants' contention were accepted -- that no environmental impact statement is required until the final approval stage -- then it could well be too late to adjust the formulated plans so as to minimize adverse environmental effects. 455 F.2d at 1121.

In La Raza Unida v. Volpe, supra, the district court was called upon to decide at what stage in the lengthy process of highway planning and construction a given project becomes federal in nature. There the state had obtained location approval from FHWA for a 14-mile stretch of highway. Location approval is the second step in the project development; at that time the route within the previously designed corridor is established. No federal funds or commitment came with this approval and the state had not even requested federal funds. Indeed a number of other approvals must be obtained before federal funding becomes available pursuant to 23 U.S.C. §106(a) and PPM 20-8. Over the objection that FHWA was not yet "committed" to the project, the court found that "Group III" projects (those for which funds "may eventually" be provided) became federal upon location approval. The court reasoned that the state highway agency should not be allowed the considerable benefits which accompanied an option to obtain federal funds without assuming the attendant obligations. Any project which seeks even the possible protection and assistance of the federal government must fall within the federal statutes and regulations.

> Finally, in addition to the strong policy statements and the wording of the statute and regulations, common sense dictates that the federal protective devices apply before federal funds are sought. It does little good to shut the barn doors after all the horses have run away ... All the protections that Congress sought to establish would be futile gestures were a state able to ignore the spirit (and letter) of the various acts and regulations until it actually receives federal funds.
> 337 F. Supp. at 231.

Two subsequent cases have cited the La Raza Unida holding approvingly. Sierra Club v. Volpe, supra; James River and Kanawha Canal Parks, Inc. v. Richmond Metropolitan Authority, 359 F. Supp. 611 (E. D. Va. 1973)(hereafter "James River"). In James River the court made the following critical point: if a state is allowed to avoid NEPA compliance by foregoing federal funds though eligible for them after location approval, a state can ignore environmental considerations in precisely those instances where they may be most important. 359 F. Supp. at 633.

The court below found that the portion of relocated Route 7 north of Danbury had received a federal approval of no less significance than location approval. Opin. p. 7. Therefore, on the basis of both legislative mandate and sound policy, the highway project should be deemed federal. One of the best statements of the necessity of so finding may be found in the district court's opinion:

> The argument in La Raza Unida, as echoed in James River, is that if NEPA does not apply to federal highways that are eligible for federal funding, state officials will retain the discretion to decide at any time prior to the construction whether to subject themselves to NEPA requirements. Since they need not elect to take federal funds until the end of the planning and design process, they can retain the option of foregoing federal funds if NEPA compliance appears onerous. Moreover, they do not lose federal money, since these funds are invariably reallocated to other federal-aid highways within the state. Opin. p. 9 (Emphasis supplied).

Even if location approval or its equivalent is not held to automatically transform a tentative project into a major federal action, such federal approval combined with the expenditure of federal monies in connection with the new Route 7 north of Danbury and the state's maintenance of its eligibility for federal funds up until issuance of an injunction regarding a related portion south of Danbury (346 F. Supp. 731) must surely do so. These actions clearly expanded the degree of federal involvement and influence on the project and make the finding of a federal-state partnership in this highway project imperative.

The district court makes the point that FHWA has in no way induced Connecticut to reconstruct Route 7 between Danbury and New Milford. Opin. pp. 9-10. However, this should not be a measure of whether or not a project is or is not a "federal action" for FHWA rarely plays the role of inducing or planning route construction or reconstruction. This is revealed by the DOT's own summary of the federal-state relationship in highway building:

> While the Federal-Aid Program is a cooperative one, the states choose the systems of routes for development, select and plan the individual projects to be built each year, acquire the right-of-way, and award and supervise the construction contracts. The states pay for the work as it progresses and then claim reimbursement from the Federal Government for the Federal-Aid share of the cost. [The FHWA's] function is that of guidance, control and approval in each succeeding step of the process.
> United States Department of Transportation, Bureau of Public Roads, America's Lifelines 4 (1969).

B. Once A Highway Project Becomes a "Federal Action" Within The Meaning Of NEPA, The Requirements Of Federal Law May Not Be Avoided By A Last Minute State Election to Use State Money For Construction.

An attempt to disclaim the federal nature of a project by construction with state funds when NEPA compliance becomes too difficult must be proscribed. Sierra Club v. Volpe, supra, dealt with this issue. There, as in the case at hand, both state and federal highway officials had regularly complied with the various federal requirements with a view that the state would exercise and the federal government would recognize the state's option to receive federal funding. However, it was contended that since the state had advertised for construction bids without obtaining the necessary FHWA approval, thus foregoing its right to federal aid, and since FHWA had withdrawn all prior federal approvals of the project, the project was not a "federal action" within the meaning of NEPA and the other federal statutes involved. Noting that at the time the suit was filed, the project was clearly a "federal project" in that up until then the state had retained its option to apply for federal funding, the court ruled that:

> Waiver of federal aid by the state, acquiesced in by the federal agency, at the last minute for a project, which has otherwise been long treated as a federal aid project, should not be made a ground for disclaiming the federal nature of the project where it appears that the purpose is to avoid compliance with federal statutory environmental requirements. 351 F.Supp. 1007.

In Named Individual Members of the San Antonio Conservation Society v. Texas Highway Department, 446 F.2d 1013 (5th Cir. 1971), (hereafter "Named Individuals"), the state, unable to comply with NEPA throughout the length of a highway in San Antonio, Texas, proposed to segment the highway and construct the middle segment with only state funds. Under the state plan, the federal funds for the middle segment would be used for other highway construction. The court flatly rejected the state's proposal:

> The North Expressway is now a federal project, and it has been a federal project since the Secretary of Transportation authorized federal participation in the project on August 13, 1970. [On August 13, 1970, Secretary Volpe had authorized construction of the two "end segments"]. As such, the North Expressway is subject to the laws of Congress, and the State as a partner in the construction of the project is bound by those laws. [Ftn. omitted]. The supremacy of federal law has been recognized as a fundamental principle of our Government since the birth of the Republic. United States Constitution, Art. VI, cl. 2. The State may not subvert that principle by a mere change in bookkeeping or by shifting funds from one project to another. 446 F.2d at 1027.

The above quote points up the critical fact that by foregoing federal funds on a given highway project, the state does not lose that federal money but may transfer that money for use on other projects. If a state is permitted to avoid NEPA while retaining federal funds granted with the understanding that the Act's objectives would be fostered, the Congressional

intent to preserve the quality of the nation's environment will be seriously frustrated. See, Ely v. Velde, ____F.2d_____, 6 ERC 1558 (4th Cir. 1974). To avoid this outcome, a state should not be allowed to disclaim the federal nature of a highway project where there is evidence, as in the case at hand, establishing that avoidance of statutory environmental requirements has motivated its declination of federal construction funds.

## POINT II

### A PROJECT IS A FEDERAL ACTION WITHIN THE MEANING OF NEPA REGARDLESS OF WHETHER FEDERAL FUNDS ARE ULTIMATELY USED ON IT IF IT IS AN INTEGRAL PART OF A LARGER PROJECT FOR WHICH FEDERAL AID HAS BEEN USED OR IS PLANNED.

Comprehensive environmental review is necessary if federal agencies are to comply to the fullest extent possible with NEPA's mandate that alternatives to proposed actions be considered. 42 U.S.C. §4332(2)(C)(iii) & (D). Comprehensive review is also a prerequisite to accomplishment of the obligation placed on federal agencies "to use all practical means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources" to preserve and enhance the environment. 42 U.S.C. §4331(b).

The traditional federal-state planning processes make overall environmental planning difficult of accomplishment and all too often NEPA's purpose of forcing agencies to engage in long-range planning is frustrated by environmental impact statements which focus only on small segments of highway. The ultimate insult comes, however, when a project conceived of and planned as a whole is artifically segmented. Such "project splitting" constitutes a gross undermining of the purposes of the Act.

A. NEPA Requires Comprehensive Review of Planned Actions.

To the fullest extent possible all agencies of the federal government must include in the detailed statement which must accompany every proposal for major federal action significantly affecting the human environment alternatives to the proposed action and must study, develop and describe appropriate alternatives. 42 U.S.C. §4332(2)(C)(iii) & (D). To assure the comprehensive review necessary for thorough consideration of alternatives, the Council on Environmental Quality Guidelines call for the following:

> [B]road program statements will be ... required in order to assess tne environmental effects of a number of individual actions on a given geographical area (e.g., coal leases), or environmental impacts that are generic or common to a series of agency actions (e.g., maintenance or waste handling practices), or the overall impact of a large-scale program or chain of contemplated projects (e.g., major lengths of highways as opposed to small segments). 40 C.F.R. §1500.6(d)(1)(1973). (Emphasis supplied).

In fulfillment of NEPA's mandate, FHWA PPM 90-1 requires that:

> The highway section in an environmental statement should be as long as practicable to permit consideration of environmental matters on a broad scope. Piecemealing proposed highway improvements in separate environmental statements should be avoided. If possible, the highway section should be of substantial length that would normally be included in a multiyear highway improvement project. PPM 90-1, Para. 6.

The above language reflects recognition of the fact that in the highway area, the need for broad review is particularly critical because construction of isolated sections of highway coerce additional construction beyond presently planned termini. Highway dollars spent today determine what highways will be available and what environmental effects endured in the future. Thus, in order not to prematurely foreclose future alternatives which could ameliorate adverse environmental impacts, comprehensive, long-range review is mandatory.

In recognition of this fact, several cases have held that where there exists an integrated, interdependent highway system, federal involvement in the original planning of the whole system and in one major highway is sufficient to make the entire system federal for NEPA purposes. Named Individuals, supra; Conservation Society of Southern Vermont v. Secretary, 362 F. Supp. 627 (D. Vt. 1973), appeal docketed, No. 73-2629 (2d Cir. 1973) (hereafter "Conservation Society v. Secretary");

Thompson v. Fugate, 347 F. Supp. 120 (E. D. Va. 1972); Sierra Club v. Volpe, supra.

The ruling in Conservation Society v. Secretary is of particular importance in this case. The district court was presented with the issue of whether proposed construction of a twenty-mile segment of U. S. 7 in Vermont was part of a larger proposal for an improved Route 7 "superhighway" in Connecticut, Massachusetts and Vermont so as to require an environmental impact statement for the entire length of Route 7, rather than merely for the Vermont segment. The court found that while there is no overall federal plan for improvement of the Route 7 corridor, each of the three states' highway departments is looking toward this end as possible of accomplishment with federal approval over a long-range period of time. 362 F. Supp. at 636. Further, federal highway officials have knowledge of the overall planning process by state officials and to a considerable extent work in "partnership" with state officials in connection therewith, and federal highway planning money has been utilized specifically in connection with Route 7 improvement. Id. Upon the basis of these findings of fact and the recognition that irretrievable commitments are being made and alternatives precluded by the piecemeal construction of the three-state superhighway, the court ordered that prior to

construction of the Vermont segment, an overall EIS must be filed by FHWA with respect to the entire Route 7 corridor. 362 F. Supp. at 638.

This decision is critical to the case at hand in two respects. It makes clear the rationale for prohibiting segmented review of highway projects: construction of isolated sections induce traffic, tending further to require additional construction; where "irreversible and irretrievable commitments of resources," 42 U.S.C. §4332(2)(C)(v), are made in constructing segments, future alternatives are narrowed making subsequent NEPA statements for particular segments a "hollow exercise" in the words of Calvert Cliffs Coordinating Committee v. AEC, 449 F.2d 1109 (D. C. Cir. 1971). Equally important, Judge Oakes' findings regarding the three-state road place the highway here at issue in its proper context. The highway is not only on a federal-aid highway system with a portion to the south to be constructed with federal funds (Opin., ii ftn. 2) and with portions thereof still eligible for federal funding (Opin. pp. 6, 13). The highway is part of a larger proposal for an improved Route 7 through three states to be accomplished with federal approval over a long period of time, and with federal knowledge and participation in the overall planning. To ignore the relationship of the highway here at issue to this three-state

road by allowing it to be classified as a non-federal action and therefore outside the purview of the federal environmental laws is to undercut the findings of fact regarding the nature of the new Route 7 as set out in Conservation Society v. Volpe.

For the same reasons that the court in Conservation Society v. Secretary ruled that the Vermont segment could not be viewed separately from the larger proposal of which it is a part, the highway here at issue may not be split off from the larger "federal action" of which it is a part. The state has always conceived and planned the four-lane limited access expressway from Norwalk to New Milford as one highway. Opin. p. 11. See also, Committee to Stop Route 7 v. Volpe, 346 F. Supp. 731, 740 (D. Conn. 1972). Segmentation of the highway through state funding of the Danbury to New Milford portion following the issuance of an injunction on the Norwalk to New Milford portion constitutes an attempt to circumvent federal environmental requirements.

The situation is similar to that in Named Individuals, supra, where the segment at issue had always been treated as part of a larger project. The state attempted to cut out the middle portion, fund construction of it with state money only and thus have it treated separately for purposes of compliance with federal law. The court held that the state could not proceed with construction of the middle segment with its own

funds and thus subvert the supremacy of federal law.

A parallel holding was reached in Thompson v. Fugate, supra, which concerned approval of the final 8.3-mile segment of a 75-mile beltway around Richmond. The 8.3-mile segment in question ran through a historical restoration, Tuckahoe Plantation, and the court held the beltway system must be viewed as a whole for the purposes of NEPA. To label the remaining section as an isolated state route in light of federal participation in 67 miles of the 75-mile beltway was to engage in a "bureaucratic exercise" which the court would not endorse.

> The highway project with which we are concerned cannot be fractionalized. We do not deal here with an isolated street, local in nature, such as Sharon Lane in Civic Improvement Committee, et al. v. Volpe, et al., 459 F.2d 957 (4th Cir. 1972), but with a major federal-state project ... Any conclusion to the contrary would be to participate in the frustration of Congressional policy, a function which the courts are duty bound to avoid where possible. The meeting of federal requirements for 21 miles of a 29.2-mile highway project in order to partake of the federal financial allotments for that 21-mile segment, and at the same time circumvent the need to protect the national environment to the fullest extent possible on the remaining 8.3-mile segment by labeling it as a separate project, is to engage in a bureaucratic exercise which, if it is to succeed, must do so without the imprimatur of this Court -- a task which is doomed to failure unless and until a superior court deems otherwise. 347 F. Supp. at 124.

A similar attempt to sever a controversial 6.3-mile segment of California U.S. 1 from federal participation was rejected in Sierra Club v. Volpe, supra, based on the following rationale: "Congress intended NEPA to be broad enough to cover the area over which construction may be coerced by construction of another segment in a different area; that where the environmental features of the project route have not been considered as a whole and where there is such a coercive effect, NEPA requires an EIS for the entire project." 351 F. Supp. at 1008. In a summary of the facts strikinglysimilar to the ones at hand, the court noted that the segment of highway which defendants claimed was no longer a "federal project," was part of Route 1 which has been designated as a federal-aid primary route; that a section of highway to the north had been built with federal funding; that the proposed segment directly south of the project the state planned to reconstruct with federal funds and pursuant thereto, was preparing an EIS. It was also noted that any separate future consideration of environmental impact on the planned construction south of the project might well be an empty formality. The court below pointed up the very same problem when it stated that construction north of Danbury will provide additional reasons for construction of the portion south of Danbury. Opin. p. 13. Preparation of an EIS on the portion

south of Danbury will thus be a "hollow exercise."

The new Route 7 from Norwalk to New Milford must be viewed as the unitary project it has always been planned as and the requirements of federal lawheld applicable to the whole, not just a portion. As the district court in its previous opinion relating to Route 7 stated:

> If the proposal is to build an expressway from Norwalk to New Milford (and there is substantial evidence to indicate this is the plan) then these points determine the proper scope of the impact statement. 346 F. Supp. at 740.

B. A Project Planned As An Integral Part of A Larger Federal Action May Not Be Exempted From NEPA's Requirements For the Reason That It Also Serves Local Needs And Therefore Has Some "Independent Justification."

The court below ruled in effect that segmentation was proper if there were some independent justification for the new Route 7 between Danbury and New Milford. Opin. p. 12. By adopting this test, the court provided an easy way out of NEPA's requirements regarding comprehensive review and consideration of alternatives to the fullest extent possible.

While the court in Conservation Society v. Secretary, supra, expressly found that two lanes of the Vermont segment were needed for local purposes (362 F. Supp. at 635 and 638), the court refused to allow construction on those two lanes to

proceed until a comprehensive EIS on the whole Route 7 corridor was prepared. The court foresaw the devastating environmental impact which would result if piecemeal construction were permitted up and down the Route 7 corridor based on the "local needs" rationale. 362 F. Supp. at 636.

In Sierra Club v. Froehlke, 359 F. Supp. 1289, 1324-5 (S. D. Texas, 1973), it was held that where a multiple purpose project, including a project some of whose purposes may have independent justification, is sufficiently associated with a major project, an injunction as to the local project pending completion of an EIS as to the larger project is required. 359 F. Supp. at 1324-1325.

If the primary purposes of a multi-purpose project relate to the serving of local needs that is one thing. But where there is a substantial nexus to a major project, indeed where there is a showing that the project has been conceived of and planned as an integral part of the major project and will have a coercive effect on other components of the major project, it may not be characterized as local in nature and therefore treated separately. See, Sierra Club v. Froehlke, supra; Committee to Stop Route 7 v. Volpe, supra, at 734. Piecemeal environmental review which would be the inevitable consequence of any other rule violates the mandate for comprehensive review under NEPA.

## CONCLUSION

The order of the United States District Court for the District of Connecticut denying the motion made by the plaintiffs to extend the scope of the original injunction to bar construction between Danbury and New Milford until adequate compliance with NEPA should be reversed.

Respectfully submitted,

SARAH CHASIS, ESQ.
Natural Resources Defense Council, Inc.
Attorney for Amici Curiae

Dated: New York, N. Y.
July 8, 1974.

# United States Court of Appeals

## FOR THE SECOND CIRCUIT

No.

## AFFIDAVIT OF SERVICE BY MAIL

Richmond Thegg, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 941 Winthrop Street Brooklyn, New York 11203

That on the 8th day of July, 1974, deponent served the within Brief upon Haynes N. Johnson, Esq., Bryan, Parmelee, Johnson, & Bollinger 460 Summer Street, Stamford, Connecticut 06901

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Attorney(s) for the Appellees in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

County of Kings

s/ Richmond Thegg

Sworn to before me,

JOSEPH T. KING
Notary Public, State of New York
No. 30-2119709 Qual. in Nassau County
Cert. filed in Kings County
Commission Expires March 30, 1975

This 8 day of July, 1974

s/ King